
UTAH LABOR COMMISSION

GEORGE M. MARKOVICH,

Petitioner,

vs.

**KENNECOTT UTAH
COPPER CORPORATION,**

Respondent.

**ORDER GRANTING REQUEST
FOR RECONSIDERATION**

Case No. 06-0054

Kennecott Utah Copper Corporation (“Kennecott”) asks the Utah Labor Commission to reconsider its prior decision regarding George M. Markovich’s claim for benefits under the Utah Workers' Compensation Act, Title 34A, Chapter 2, Utah Code Annotated.

The Labor Commission exercises jurisdiction over this matter pursuant to Utah Code Annotated § 63-46b-13.

BACKGROUND AND ISSUES PRESENTED

Mr. Markovich suffered a compensable back injury while working at Kennecott on November 16, 1999. In previous proceedings, Judge Marlowe concluded that Mr. Markovich suffered from four medical conditions as a result of his work accident, including lower extremity thrombophlebitis. Judge Marlowe ordered Kennecott to pay medical treatment for each of these conditions and to pay Mr. Markovich’s attorney’s fees.

After Judge Marlowe issued her decision, Kennecott filed a motion for review, arguing two points: (1) that Mr. Markovich’s accident at Kennecott did not cause his thrombophlebitis and, consequently, Kennecott should not be required to pay treatment of that condition; and (2) that Mr. Markovich was not entitled to attorney’s fees because he had not used the Commission’s mediation process—a statutory precondition to an award of attorney’s fees.

On November 19, 2007, the Commission issued its decision. The Commission concluded that the evidence did not establish a medical causal connection between Mr. Markovich’s accident at Kennecott and his thrombophlebitis. The Commission therefore held that Kennecott was not liable for the cost of medical treatment for that condition. However, the Commission rejected Kennecott’s argument regarding attorney’s fees, concluding that Mr. Markovich had used the Commission’s mediation process.

Kennecott now asks the Commission to reconsider that part of its previous decision which upheld Judge Marlowe’s award of attorney’s fees. Kennecott contends that even before Mr. Markovich filed his claim for payment of medical treatment, Kennecott had already paid all

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expenses for treatment of Mr. Markovich's other three conditions. Consequently, those medical expenses were never at issue in this proceeding. The only expenses in dispute related to treatment of Mr. Markovich's thrombophlebitis. Kennecott points out that the Commission previously concluded that Kennecott is not liable for the thrombophlebitis expenses. Therefore, since Mr. Markovich was not successful in obtaining any additional medical benefits, he is not entitled to an award of attorney's fees.

Responding to Kennecott's arguments, Mr. Markovich asserts that, although he was not awarded medical benefits related to his thrombophlebitis, he was awarded medical benefits for his other conditions. Mr. Markovich argues that his success in obtaining an award of medical expenses for these other conditions justifies an award of attorney's fees.

DISCUSSION

The Commission's previous decision only addressed the two arguments that Kennecott raised in its motion for review: 1) Kennecott's liability for treatment of Mr. Markovich's thrombophlebitis; and 2) whether Mr. Markovich had qualified for an award of attorney's fees by using the Commission's mediation process. Now, in asking the Commission to revisit the question of attorney's fees, Kennecott raises another argument—that Mr. Markovich is not entitled to attorney's fees because he was not awarded any additional medical expenses in this proceeding.

Pursuant to § 34A-1-309 of the Utah Labor Commission Act, the Commission may award attorney's fees to an injured worker "[i]f the commission orders that only medical benefits be paid" The Commission interprets this as applying to situations in which an injured worker has prevailed in a proceeding to compel a self-insured employer or insurance carrier to assume liability for medical expenses. With that in mind, the Commission has carefully reviewed the record in this proceeding to ascertain what medical benefits were actually in dispute between Kennecott and Mr. Markovich.

The hearing record establishes that, at the beginning of the evidentiary hearing on Mr. Markovich's claim, Kennecott specifically asked what medical benefits Mr. Markovich was seeking. Kennecott's counsel then asserted that Kennecott was unaware of any on-going treatment or unpaid medical expenses related to Mr. Markovich's back, bowel or bladder problems. In response, Mr. Markovich's attorney stated that the only unpaid expenses were for medications and blood tests associated with Mr. Markovich's thrombophlebitis. The hearing proceeded on that basis, with discussion of Mr. Markovich's thrombophlebitis but not his other conditions.

Based on the foregoing exchange between counsel, the Commission concludes that the only medical benefits actually in dispute in this matter relates to medical treatment for Mr. Markovich's thrombophlebitis. In its previous decision, the Commission determined that Mr. Markovich's work accident is not the medical cause of this thrombophlebitis and therefore Kennecott is not liable for costs of treating that condition. Consequently, the Commission concludes that Mr. Markovich did

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not prevail in his claim for additional medical benefits and is not entitled to an award of attorney's fees.

ORDER

The Commission grants Kennecott's request for reconsideration. The Commission hereby sets aside that part of Judge Marlowe's decision which ordered Kennecott to pay Mr. Markovich's attorney's fees in this matter. It is so ordered.

Dated this 15th day of February, 2008.

Sherrie Hayashi
Utah Labor Commissioner

NOTICE OF APPEAL RIGHTS

Any party may appeal this Order to the Utah Court of Appeals by filing a Petition For Review with that Court within 30 days of the date of this Order.